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September 11, 1995

Mr. J--- C---  
Manager, State and Local Use Tax  
B--- G---, Inc.  
XXX --- Avenue  
--- ---, --- XXXXX

Re: B--- G---, Inc.  
Account No. SZ --- XX-XXXXXX

Dear Mr. C---:

This office has received your letter dated July 12, 1995, in which you request a legal opinion on the tax applicable to the sale of oxygen gas in the following situation:

B--- G--- C--- Corporation owns and operates a glass-container manufacturing facility in --- ---, California. As part of the manufacturing facility, B--- G--- C--- Corporation operates a oxy-fuel furnace used to manufacture glass containers. B--- G---, Inc. owns and operates an oxygen production facility, which is located on the real property owned by B--- G--- C--- Corporation. B--- G---, Inc. produces oxygen and sells it in vapor form to B--- G--- C--- Corporation via a pipeline. B--- G---, Inc. owns a segment of the pipeline from its oxygen production facility to the junction point outside the perimeter of the B--- G--- C--- Corporation building. B--- G--- C--- Corporation owns the pipeline from the junction point to the B--- G--- C--- Corporation building. Title to the oxygen furnished is transferred to B--- G--- C--- Corporation at the junction point. B--- G---, Inc. meters the oxygen as it enters the pipeline on its way to the B--- G--- C--- Corporation furnace. Inside its building, B--- G--- C--- Corporation meters the oxygen as it enters the furnace. Pursuant to the terms of a contract, B--- G---, Inc. must provide specified quantities of oxygen per hour. Contract performance is based on the volume of cubic feet of oxygen flowing through the B--- G---, Inc. meter as the oxygen enters the pipeline.

You ask if the sale of the sale of the oxygen gas is exempt from tax pursuant to California Revenue and Taxation Code section 6353.

California Revenue and Taxation Code section 6353 provides, in part:

“There are exempted from the taxes imposed by this part the gross receipts from the sales, furnishing, or service of and the storage, use, or other consumption in this state of gas, electricity, and water . . . when delivered to consumers through mains, lines, or pipes . . . .”

You are making sales of oxygen by delivering that oxygen to the purchaser via pipes. At the time of the sale, the oxygen is in gaseous form. We conclude that such sales are exempt from sales tax under section 6353.

If you have any further questions or concerns, please feel free to contact me.

Very truly yours,

Thomas J. Cooke  
Staff Counsel

TJC/cmm